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July 28, 2000

VIA COURIER

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Room TW-B204  
Washington, DC 20554

\* VA BAR ONLY  
\*\* MA BAR ONLY  
\*\*\* MI AND IL BAR ONLY  
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**Re: Notification of Written ExParte Presentation in a Non-Restricted Proceeding, In Re Petition of NewPath Holdings, Inc. For an Expedited Declaratory Ruling on the Scope of Unbundled Access to the High-Frequency Portion of Loops, CC Dkt. No. 00-50**

Dear Ms. Roman Salas:

NewPath Holdings, Inc., ("NewPath") by its counsel and in accordance with Section 1.1206 of the Commission's rules, hereby respectfully submits an original and two copies of this ex parte notification, given that the meeting with FCC staff included a written presentation.

On July 27, 2000, Lawrence R. Freedman, Richard L. Davis and S. Jenell Trigg, of Fleischman and Walsh, L.L.P., outside counsel to NewPath, met with Margaret Egler, John Stanley, Claire Blue and Bill Dever, of the Common Carrier Bureau's Policy & Program Planning Division. Larry Stevens, Regulatory Affairs for NewPath, joined the meeting via telephone from Des Moines, Iowa.

The focus of the meeting was on the aspect of NewPath's Petition for Expedited Declaratory Ruling ("Petition") that will allow a CLEC, providing data on the high frequency portion of the loop via unbundled network elements ("UNEs"), to also provide voice to the end user via resale of the ILEC's analog service on the same loop. In response to staff inquiries, NewPath advocated that the provision of bundled services by a single CLEC using a combination of resale and UNEs is consistent with the Communications Act of 1934, as amended, and the

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underlying unbundling and competitive rationales stated in the FCC's Line Sharing Order.<sup>1</sup> NewPath requested that the Commission grant its Petition to allow for this 'single CLEC' combination.

NewPath also stressed that it should be plain, particularly from the range of comments and arguments made in opposition to NewPath's Petition, that there currently exists significant controversy over the expressed language of the FCC's Line Sharing Order.<sup>2</sup> As further evidence that a clarification is needed from the Commission to help resolve these issues, NewPath submitted the DSL Appendix from SBC's "13 State Generic Interconnection Agreement as of July 1, 2000" as an example of ILEC interpretation of their line sharing obligations.<sup>3</sup> In numerous sections, the Agreement restates an ILEC-created limitation that line sharing will only be provided on loops where the ILEC provides the "retail POTS analog service,"<sup>4</sup> instead of simply loops where the ILEC is "providing analog voice service" as expressly stated in the Line Sharing Order.<sup>5</sup>

Finally, NewPath noted that the ILEC's interpretation of the Line Sharing Order, manifested in real-world negotiations in various states, serves as a major market entry barrier for a small business CLEC.<sup>6</sup> In particular, by forcing a CLEC to provide resale voice and data services on different loops, the ILECs preserve the same competitive advantages over CLECs that were specifically discussed in the Line Sharing Order. These advantages include the distinct marketing advantage of bundling services on a single line. In addition, as a matter of cost, the ILEC can still add data services to its voice customers at marginal cost, while CLECs must add

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<sup>1</sup> In re Deployment of Wireline Services Offering Advanced Telecommunication Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order in CC Dkt. No. 98-147 and Fourth Report and Order in CC Dkt. No. 96-98, FCC 99-355 (rel. Dec. 9, 1999) ("Line Sharing Order").

<sup>2</sup> See NewPath's Petition for Declaratory Ruling (March 14, 2000) and Response of NewPath Holdings, Inc. (May 11, 2000) for details.

<sup>3</sup> This public document was downloaded from SBC's webpage the morning of the meeting, July 27. <https://clec.sbc.com/clechb/unrestr/custguide/>.

<sup>4</sup> Agreement at Sections 2.4, 4.1.5, 4.2, 4.4, 4.5, 4.6, 8.1 (emphasis added).

<sup>5</sup> Line Sharing Order, para. 72.

<sup>6</sup> Pursuant to Section 257 of the Telecommunications Act of 1996, the Commission is required to identify and eliminate market entry barriers for small businesses in the provision of telecommunications services and information services. 47 U.S.C. § 257.

Ms. Magalie Roman Salas  
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the cost of an entire UNE loop<sup>7</sup> to the costs of reselling voice service. Indeed, without the existence of two separate loops to provide data and resold voice service, ILEC interpretations of the Line Sharing Order may preclude a CLEC from offering both UNE-based data and resale voice services to a single customer at all. Nothing in the Line Sharing Order or the essentially unqualified menu of service options available to CLECs under the Act calls for or supports this anticompetitive result.

In summary, such barriers to entry currently prohibit an ILEC competitor from a cost-effective and expeditious roll-out of bundled services to residential, small and mid-size business customers in rural areas.

Please communicate with the undersigned if there are any questions concerning this filing.

Sincerely,  
  
S. Jenell Trigg  
*Counsel for NewPath Holdings, Inc.*

Attachment

cc: Margaret Egler/FCC  
John Stanley/FCC  
Bill Dever/FCC  
Claire Blue/FCC  
Jessica Rosenworcel/FCC  
Dorothy T. Attwood/FCC  
Anna Gomez/FCC  
Sandra Adams/NewPath  
Larry Stevens/NewPath

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<sup>7</sup> NewPath pointed out that State Commission-approved pricing for UNE loops is routinely much higher than the prices for only the high frequency portion of loops.

**APPENDIX DSL  
(Including Line Sharing or HFPL)**

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**APPENDIX DSL**  
**Digital Subscriber Line (DSL) Capable Loops**

**1. INTRODUCTION**

- 1.1 This Appendix sets forth terms and conditions for providing DSL and the High Frequency Portion of the Loop (HFPL) by the applicable SBC Communications Inc. (SBC) owned Incumbent Local Exchange Carrier (ILEC) and Competitive Local Exchange Carrier (CLEC).
- 1.2 SBC Communications Inc. (SBC) means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company, Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone Company and/or Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.
- 1.3 As used herein, SBC-12STATE means the above listed ILECs doing business in Arkansas, California, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin.
- 1.4 As used herein, SNET means the applicable above listed ILEC doing business in Connecticut.
- 1.5 The prices at which SBC-12STATE agrees to provide CLEC with DSL and HFPL are contained in the applicable Appendix and/or the applicable Commission ordered tariff where stated.
- 1.6 The prices, terms, and conditions herein are not applicable in SNET. SNET's unbundled DSL offering may be found in the Commission-ordered Connecticut Access Service Tariff, Section 18.2.
- 1.7 SBC-12STATE agrees to provide CLEC with access to UNEs (including the unbundled xDSL Capable Loop and HFPL offerings) in accordance with the rates, terms and conditions set forth in this xDSL Attachment and the general terms and conditions applicable to UNEs under this Agreement, for CLEC to use in conjunction with its desired xDSL technologies and equipment to provide xDSL services to its end user customers.

## 2. DEFINITIONS

- 2.1 For purposes of this Appendix, a “loop” is defined as a transmission facility between a distribution frame (or its equivalent) in a central office and the loop demarcation point at an end user customer premises.
- 2.2 For purposes of this Appendix, a “subloop” is defined as any portion of the loop from SBC-12STATE’s F1/F2 interface to the demarcation point at the customer premise that can be accessed at a terminal in SBC-12STATE’s outside plant. An accessible terminal is a point on the loop where technicians can access the wire or fiber within the cable without removing a splice closure to reach the wire within. The Parties recognize that this is only one form of subloop (defined as the F1/F2 interface to the customer premise) as set forth in the FCC’s Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC 99-238), including the FCC’s Supplemental Order issued In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996, in CC Docket No. 96-98 (FCC 99-370) (rel. November 24, 1999) (“the UNE Remand Order”). Additional subloop types may be negotiated and agreed to by the Parties consistent with the UNE Remand Order. Subloops discussed in this Appendix will be effective in accordance with the dates set out in the UNE Remand Order.
- 2.3 The term “Digital Subscriber Line” (“DSL”) describes various technologies and services. The “x” in “xDSL” is a place holder for the various types of DSL services, including, but not limited to ADSL (Asymmetric Digital Subscriber Line), HDSL (High-Speed Digital Subscriber Line), IDSL (ISDN Digital Subscriber Line), SDSL (Symmetrical Digital Subscriber Line), UDSL (Universal Digital Subscriber Line), VDSL (Very High-Speed Digital Subscriber Line), and RADSL (Rate-Adaptive Digital Subscriber Line).
- 2.4 “High Frequency Portion of the Loop” (“HFPL”) is defined as the frequency above the voice band on a copper loop facility that is being used to carry traditional POTS analog circuit-switched voice band transmissions. The FCC’s Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (rel. December 9, 1999) (the “Line Sharing Order”) references the voice band frequency of the spectrum as 300 to 3000 Hertz (and possibly up to 3400 Hertz) and provides that DSL technologies which operate at frequencies generally above 20,000 Hertz will not interfere with voice band transmission. SBC-12STATE shall only make the HFPL available to CLEC in those instances where SBC-12STATE also is providing retail POTS (voice band circuit switched) service on the same local loop facility to the same end user.

- 2.5 A loop technology that is “presumed acceptable for deployment” is one that either complies with existing industry standards, has been successfully deployed by another carrier in any state without significantly degrading the performance of other services, or has been approved by the FCC, any state commission, or an industry standards body.
- 2.6 A “non-standard xDSL-based technology” is a loop technology that is not presumed acceptable for deployment under Section 2.5 of this Appendix.
- 2.7 “Continuity” shall be defined as a single, uninterrupted path along a circuit, from the Minimum Point of Entry (MPOE) or other demarcation point to the Point of Interface (POI) located on the horizontal side of the Main Distribution Frame (MDF).
- 2.8 “Proof of Continuity” shall be determined by performing a physical fault test from the MPOE or other demarcation point to the POI located on the horizontal side of the MDF by providing a short across the circuit on the tip and ring, and registering whether it can be received at the far end. This test will be known hereafter as “Proof of Continuity” or “Continuity Test.”
- 2.9 “xDSL Capable Loop” is a loop that a CLEC may use to deploy xDSL technologies.
- 2.10 “Cooperative Acceptance Testing” shall be defined as the joint testing between **SBC-12STATE**’s Technician, its Local Operations Center (“LOC”), and the CLECs designated test representative for the purpose of verifying Continuity as more specifically described in Section 8.
- 2.11 Plan of Record for Pre-Ordering and Ordering of xDSL and other Advanced Services (“Plan of Record” or “POR”) refers to **SBC-12STATE**’s December 7, 1999 filing with the FCC, including any subsequent modifications or additions to such filing.
- 2.12 The “Splitter” is a device that divides the data and voice signals concurrently moving across the loop, directing the voice traffic through copper tie cables to the switch and the data traffic through another pair of copper tie cables to multiplexing equipment for delivery to the packet-switched network. The Splitter may be directly integrated into the Digital Subscriber Line Access Multiplexer (DSLAM) equipment or may be externally mounted.
- 2.13 Digital Subscriber Line Access Multiplexer” (“DSLAM”) is a piece of equipment that links end-user DSL connections to a single high-speed packet switch, typically ATM or IP.



### 3. GENERAL TERMS AND CONDITIONS RELATING TO UNBUNDLED xDSL-CAPABLE LOOPS

- 3.1 Unless otherwise noted, all references to “loop” in Sections 3.1 - 3.8 includes **SBC-12STATE**’s HFPL offering unless otherwise noted.
- 3.2 **SBC-12STATE** will provide a loop for CLEC to deploy xDSL technologies presumed acceptable for deployment or non-standard xDSL technology as defined in this Appendix. **SBC-12STATE** will not impose limitations on the transmission speeds of xDSL services; provided, however, **SBC-12STATE** does not guarantee transmission speeds, available bandwidth nor imply any service level. Consistent with the Line Sharing Order, CLEC may only deploy xDSL technologies on HFPL loops that do not cause significant degradation with analog voice band transmission.
- 3.3 **SBC-12STATE** shall not deny CLEC’s request to deploy any loop technology that is presumed acceptable for deployment pursuant to state or federal rules unless **SBC-12STATE** has demonstrated to the state commissions in accordance with FCC orders that CLEC’s deployment of the specific loop technology will significantly degrade the performance of other advanced services or traditional voice band services.
- 3.4 In the event the CLEC wishes to introduce a technology that has been approved by another state commission or the FCC, or successfully deployed elsewhere, the CLEC will provide documentation describing that action to **SBC-12STATE** and the state commission before or at the time of its request to deploy such technology within **SBC-12STATE**. The documentation should include the date of approval or deployment, any limitations included in its deployment, and a sworn attestation that the deployment did not significantly degrade the performance of other services.
- 3.5 In the event the CLEC wishes to introduce a technology that does not conform to existing industry standards and has not been approved by an industry standards body, the FCC, or a state commission, the burden is on the CLEC to demonstrate that its proposed deployment meets the threshold for a presumption of acceptability and will not, in fact, significantly degrade the performance of other advanced services or traditional voice band services.
- 3.6 Liability
- 3.6.1 Notwithstanding any other provision of this Appendix, each Party, whether a CLEC or **SBC-12STATE**, agrees that should it cause any non-

standard xDSL technologies to be deployed or used in connection with or on **SBC-12STATE** facilities, the Party ("Indemnifying Party") will pay all costs associated with any damage, service interruption or other telecommunications service degradation, or damage to the other Party's ("Indemnitee") facilities. Notwithstanding any other provision of this Appendix, each Party ("Indemnifying Party") shall release, defend and indemnify the other Party ("Indemnitee") and hold Indemnitee harmless against any loss, or claim made by the Indemnifying Party's end-user, arising out of the negligence or willful misconduct of the Indemnitee, its agents, its end users, contractors, or others retained by such Party, in connection with Indemnitee's provision of splitter functionality under this Appendix.

- 3.6.2 For any technology, CLEC's use of any **SBC-12STATE** network element, or its own equipment or facilities in conjunction with any **SBC-12STATE** network element, will not materially interfere with or impair service over any facilities of **SBC-12STATE**, its affiliated companies or connecting and concurring carriers involved in **SBC-12STATE** services, cause damage to **SBC-12STATE**'s plant, impair the privacy of a communications carried over **SBC-12STATE**'s facilities or create hazards to employees or the public. Upon reasonable written notice and after a reasonable opportunity to cure, **SBC-12STATE** may discontinue or refuse service if CLEC violates this provision, provided that such termination of service will be limited to CLEC's use of the element(s) causing the violation. Subject to Section 9.3 for HFPL, **SBC-12STATE** will not disconnect the elements causing the violation if, after receipt of written notice and opportunity to cure, the CLEC demonstrates that their use of the network element is not the cause of the network harm. If **SBC-12STATE** does not believe the CLEC has made the sufficient showing of harm, or if CLEC contests the basis for the disconnection, either Party must first submit the matter to dispute resolution under the Dispute Resolution Procedures set forth in this Appendix. Any claims of network harm by **SBC-12STATE** must be supported with specific and verifiable supporting information.

### 3.7 Indemnification

- 3.7.1 Covered Claim: Notwithstanding any other provisions of this Appendix, each Party ("Indemnifying Party") will release, indemnify, defend and hold harmless the other Party ("Indemnitee") from and against any loss, liability, claim, or damage, including but not limited to direct, indirect or consequential damages, made against Indemnitee by any telecommunications service provider or telecommunications user (other

than claims for damages or other losses made by an end-user of Indemnatee for which Indemnatee has sole responsibility and liability) caused, in whole or substantial part, by the use of non-standard xDSL technologies by the Indemnifying Party, or by the Indemnifying Party's provision of splitter functionality under this Appendix, or the Indemnifying Party's (i.e., CLEC's) retention of the loop used to provide the HFPL when the end user terminates voice service from Indemnatee (i.e., **SBC-12STATE**) and Indemnatee is requested by another telecommunications service provider to provide a voice grade service or facility to the end user.

- 3.7.2 Indemnifying Party is permitted to fully control the defense or settlement of any Covered Claim, including the selection of defense counsel. Notwithstanding the foregoing, the Indemnifying Party will consult with Indemnatee on the selection of defense counsel and consider any applicable conflicts of interest. Indemnifying Party is required to assume all costs of the defense and any loss, liability, claim or damage indemnified pursuant to Section 3.7.1 above and Indemnatee will bear no financial or legal responsibility whatsoever arising from such claims.
- 3.7.3 Indemnatee agrees to fully cooperate with the defense of any Covered Claim. Indemnatee will provide written notice to the Indemnifying Party of any Covered Claim at the address for notice set forth herein within ten days of receipt, and, in the case of receipt of service of process, will deliver such process to the Indemnifying Party not later than 10 business days prior to the date for response to the process. Indemnatee will provide to Indemnifying Party reasonable access to or copies of any relevant physical and electronic documents or records related to the deployment of non-standard xDSL technologies in the area affected by the claim, or the Indemnifying Party's provision of splitter functionality under this Appendix, all other documents or records determined to be discoverable, and all other relevant documents or records that defense counsel may reasonably request in preparation and defense of the Covered Claim. Indemnatee will further cooperate with the Indemnifying Party's investigation and defense of the Covered Claim by responding to the reasonable requests to make its employees with knowledge relevant to the Covered Claim available as witnesses for preparation and participation in discovery and trial during regular weekday business hours. Indemnatee will promptly notify the Indemnifying Party of any settlement communications, offers or proposals received from claimants.
- 3.7.4 Indemnatee agrees that Indemnifying Party will have no indemnity obligation under 3.7.1 above, and Indemnatee will reimburse Indemnifying

Party's defense costs, in any case in which Indemnifying Party's technology is determined not to be the cause of any of Indemnitee's liability and in any case in which the Indemnifying Party's provision of splitter functionality under this Appendix is determined not to be the cause of any of Indemnitee's liability.

- 3.8 Claims Not Covered: No Party hereunder agrees to indemnify or defend any other Party against claims based on the other Party's gross negligence or intentional misconduct.

#### **4. UNBUNDLED xDSL-CAPABLE LOOP OFFERINGS**

- 4.1 DSL-Capable Loops: For each of the loop types described in Sections 4.1.1 - 4.1.4 below, CLEC will, at the time of ordering, notify **SBC-12STATE** as to the Power Spectral Density (PSD) mask of the technology the CLEC will deploy.
- 4.1.1 2-Wire xDSL Loop: A 2-wire xDSL loop for purposes of this section, is a copper loop over which a CLEC may provision various DSL technologies. A copper loop used for such purposes will meet basic electrical standards such as metallic connectivity and capacitive and resistive balance, and will not include load coils, mid-span repeaters or excessive bridged tap (bridged tap in excess of 2,500 feet in length). However removal of load coils, repeaters or excessive bridged tap on an existing loop is optional, subject to conditioning charges, and will be performed at CLEC's request. The rates set forth in Appendix Pricing shall apply to this 2-Wire xDSL Loop.
- 4.1.2 2-Wire Digital Loop (e.g., ISDN/IDSL): A 2-Wire Digital Loop for purposes of this Section is 160 Kbps and supports Basic Rate ISDN (BRI) digital exchange services. The terms and conditions for the 2-Wire Digital Loop are set forth in the Appendix UNE and the rates in the associated Appendix Pricing.
- 4.1.3 4-Wire xDSL Loop: A 4-Wire xDSL loop for purposes of this section, is a copper loop over which a CLEC may provision DSL technologies. A copper loop used for such purposes will meet basic electrical standards such as metallic connectivity and capacitive and resistive balance, and will not include load coils, mid-span repeaters or excessive bridged tap (bridged tap in excess of 2,500 feet in length). However removal of load coils, repeaters or excessive bridged tap on an existing loop is optional and will be performed at CLEC's request. The rates set forth in Appendix Pricing shall apply to this 4-Wire xDSL Loop.

- 4.1.4 Sub-Loop: In locations where SBC-12STATE has deployed: (1) Digital Loop Carrier systems and an uninterrupted copper loop is replaced with a fiber segment or shared copper in the distribution section of the loop; (2) Digital Added Main Line (“DAML”) technology to derive multiple voice-grade POTS circuits from a single copper pair; or (3) entirely fiber optic facilities to the end user, SBC-12STATE will make the following options available to CLEC:
- 4.1.4.1 Where spare copper facilities are available, and the facilities meet the necessary technical requirements for the provisioning of DSL, the CLEC has the option of requesting SBC-12STATE to make copper facilities available (subject to Section 4.6 below).
- 4.1.4.2 The CLEC has the option of collocating a DSLAM in SBC-12STATE’s Remote Terminal (“RT”) at the fiber/copper interface point, pursuant to collocation terms and conditions. When the CLEC collocates its DSLAM at SBC-12STATE RTs, SBC-12STATE will provide CLEC with unbundled access to subloops to allow CLEC to access the copper wire portion of the loop.
- 4.1.4.3 Where the CLEC is unable to obtain spare copper loops necessary to provision a DSL service, and SBC-12STATE has placed a DSLAM in the RT, SBC-12STATE must unbundle and provide access to its packet switching. SBC-12STATE is relieved of this unbundling obligation only if it permits a requesting CLEC to collocate its DSLAM in SBC-12STATE’s remote terminal, on the same terms and conditions that apply to its own DSLAM. The rates set forth in Appendix PRICING shall apply to this subloop.
- 4.1.5 When SBC-12STATE is the provider of the retail POTS analog voice service on the same loop to the same end-user, HFPL access will be offered on loops that meet the loop requirements as defined in Sections 4.1.1-4.1.4 above. The CLEC will provide SBC-12STATE with the type of technology it seeks to deploy, at the time of ordering, including the PSD of the technology the CLEC will deploy. If the technology does not have a PSD mask, CLEC shall provide SBC-12STATE with a technical description of the technology (including power mask) for inventory purposes.

- 4.1.5.1 xDSL technologies may only reside in the higher frequency ranges, preserving a "buffer zone" to ensure the integrity of voice band traffic.
- 4.2 When SBC-12STATE traditional retail POTS services are disconnected, SBC-12STATE will notify the CLEC that POTS service is being disconnected. The CLEC will determine whether the broadband service will be converted from a Line Sharing Circuit, or HFPL, to a full stand alone UNE loop or disconnected. All appropriate recurring and nonrecurring charges for the rearrangement and/or disconnect shall apply pursuant to underlying Pricing Appendix. Upon request of either Party, the Parties shall meet to negotiate rates, terms and conditions for such notification and disconnection.
- 4.3 SBC-12STATE shall be under no obligation to provide multi-carrier or multi-service line sharing arrangements as referenced in FCC 99-35, paragraph 75.
- 4.4 HFPL is not available in conjunction with a combination of network elements known as the platform or UNE-P (including loop and switch port combinations) or unbundled local switching or any arrangement where SBC-12STATE is not the retail POTS provider.
- 4.5 SBC-12STATE shall not be required to provide narrowband service to CLEC "A" and broadband service to CLEC "B" on the same loop. Any line sharing between two CLECs shall be accomplished between those parties and shall not utilize any SBC-12STATE splitters, equipment, cross connects or OSS systems to facilitate line sharing between such CLECs.
- 4.6 SBC-12STATE shall be under no obligation to provision xDSL capable loops in any instance where physical facilities do not exist. SBC-12STATE shall be under no obligation to provide HFPL where SBC-12STATE is not the existing retail provider of the traditional, analog voice service (POTS). This shall not apply where physical facilities exist, but conditioning is required. In that event, CLEC will be given the opportunity to evaluate the parameters of the xDSL or HFPL service to be provided, and determine whether and what type of conditioning should be performed. CLEC shall pay SBC-12STATE for conditioning performed at CLEC's request pursuant to Sections 7.1 and 7.2 below.
- 4.7 For each loop (including the HFPL), CLEC shall at the time of ordering notify SBC-12STATE as to the PSD mask of the technology the CLEC intends to deploy on the loop. If and when a change in PSD mask is made, CLEC will immediately notify SBC-12STATE. Likewise, SBC-12STATE will disclose to CLEC upon request information with respect to the number of loops using advanced services technology within the binder and type of technology deployed

on those loops. **SBC-12STATE** will use this formation for the sole purpose of maintaining an inventory of advanced services present in the cable sheath. If the technology does not fit within a national standard PSD mask (but still remains in the HFPL only), CLEC shall provide **SBC-12STATE** with a technical description of the technology (including power mask) for inventory purposes. Additional information on the use of PSD masks can be found in Section 10 below.

- 4.8 **SBC-12STATE** will not deny a requesting CLEC's right to deploy new xDSL technologies that do not conform to the national standards and have not yet been approved by a standards body (or otherwise authorized by the FCC, any state commission or which have not been successfully deployed by any carrier without significantly degrading the performance of other services) if the requesting CLEC can demonstrate to the Commission that the loop technology will not significantly degrade the performance of other advanced services or traditional voice band services.

4.8.1 Upon request by CLEC, **SBC-12STATE** will cooperate in the testing and deployment of new xDSL technologies or may direct the CLEC, at CLEC's expense, to a third party laboratory of CLEC's choice for such evaluation.

4.8.2 If it is demonstrated that the new xDSL technology will not significantly degrade the other advanced services or traditional voice based services, **SBC-12STATE** will provide a loop to support the new technology for CLEC as follows:

4.8.2.1 If the technology requires the use of a 2-Wire or a 4-Wire xDSL loop (as defined above), then **SBC-12STATE** will provide an xDSL loop at the same rates listed for a 2-Wire or 4-Wire xDSL loop and associated loop conditioning as needed; provided, however, conditioning on HFPL DSL circuits shall be provided consistent with the terms of Section 6.4.4 below.

4.8.2.2 In the event that a xDSL technology requires a loop type that differs from that of a 2-Wire or 4-Wire xDSL loop (as defined in this Attachment), the Parties make a good faith effort to arrive at an Agreement as to the rates, terms and conditions for an unbundled loop capable of supporting the proposed xDSL technology. If negotiations fail, any dispute between the Parties concerning the rates, terms and conditions for an unbundled loop capable of supporting the proposed xDSL technology shall be resolved pursuant to the dispute resolution process provided for in this Appendix.

4.8.2.3 With the exception of HFPL access, which is addressed in Section 9 below, if SBC-12STATE or another CLEC claims that a service is significantly degrading the performance of other advanced services or traditional voice band services, then SBC-12STATE or that other CLEC must notify the causing carrier and allow that carrier a reasonable opportunity to correct the problem. Any claims of network harm must be supported with specific and verifiable supporting information. In the event that SBC-12STATE or a CLEC demonstrates to the Commission that a deployed technology is significantly degrading the performance of other advanced services or traditional voice band services, the carrier deploying the technology shall discontinue deployment of that technology and migrate its customers to technologies that will not significantly degrade the performance of such services.

4.8.3 Each Party must abide by Commission or FCC-approved spectrum management standards. SBC-12STATE will not impose its own standards for provisioning xDSL services. However, SBC-12STATE will publish non-binding Technical Publications to communicate current standards and their application as set forth in Paragraph 72 of FCC Order 99-48 (rel. March 31, 1999), FCC Docket 98-147.

## 5. HFPL: SPLITTER OWNERSHIP AND RESPONSIBILITIES

### 5.1 Splitter ownership:

5.1.1 Option 1: CLEC will own and have sole responsibility to forecast, purchase, install, inventory, provision and maintain splitters. When physically collocating, splitters shall be installed in the CLECs collocation arrangement area (whether caged or cageless) consistent with SBC-12STATE's standard collocation practices and procedure. When virtually collocated, SBC-12STATE will install, provision and maintain splitters under the terms of virtual collocation.

5.1.2 Option 2: Without waiving its right to decline to provide splitters under any other prices, terms, and conditions, SBC voluntarily agrees to own, purchase, install, inventory, provision, maintain and lease splitters in accordance with the terms set forth herein. SBC will determine where such SBC-owned splitters will be located in each central office. SBC owned splitters will be placed in a common area accessible to CLECs if space is available. When placed in common areas accessible to CLECs, CLECs will have test access at the line side of the splitter. Upon CLEC's



request, SBC will perform testing and repair at the SBC-owned splitter on behalf of CLEC. In the event that no trouble is found at the time of testing by SBC, CLEC shall pay SBC for such testing at the rates set forth in the interconnection agreement with the parties. CLEC will not be permitted direct physical access to the MDF or the IDF, for testing. Upon the request of either Party, the Parties shall meet to negotiate terms for additional test access capabilities.

5.1.2.1 SBC will agree to lease such splitters a line at a time subject to the following terms and conditions:

5.1.2.1.1 Forecasts: CLEC will provide SBC with a forecast of its demand for each central office prior to submitting its first LSR for that individual office and then every January and July thereafter (or as otherwise agreed to by both parties). CLEC's failure to submit a forecast for a given office may affect provisioning intervals. In the event CLEC fails to submit a forecast in a central office which does not have available splitter ports, SBC shall have an additional ten (10) business days to install CLEC's line sharing order after such time as the additional splitter equipment is installed in the SBC central office. For requests for SBC provided splitters in offices not provisioned in the initial deployment, all such requests, including forecasts, must be made in the CLECs Collocation Application. Installation intervals will be consistent with the collocation intervals for the applicable state.

5.1.2.1.2 Forecasts will be non-binding on both ILECs and CLECs. As such, SBC-12STATE will not face liability from failure to provision facilities if the cause is simply its reliance on non-binding forecasts.

5.1.2.2 Splitter provisioning will use standard SBC configuration cabling and wiring in SBC-12STATE locations. Connecting Block layouts will reflect standard recognizable arrangements and will be wired out in contiguous 100 pair complements, and numbered 1-96. All arrangements must be consistent with SBC-12STATE's Operational Support Systems ("OSS").

- 5.1.2.3 Splitter technology will adhere to established industry standards for technical, test access, common size, configurations and shelf arrangements.
  - 5.1.2.4 All SBC-owned splitter equipment will be compliant with applicable national standards and NEBS Level 1.
  - 5.1.2.5 When an end-user disconnects SBC's POTS service, SBC will advise the end user to also notify their data CLEC. SBC will also notify the CLEC of the disconnect and will reconfigure the loop to remove the splitter in order to conserve the splitter ports for future line sharing orders. CLEC shall pay a nonrecurring charge for any such reconfiguration. The loop reconfiguration will result in temporary downtime of the loop as the splitter is removed from the circuit. Upon request of either Party, the Parties shall meet to negotiate terms for such notification and disconnection.
  - 5.1.2.6 SBC retains the sole right to select SBC-owned splitter equipment and installation vendors.
- 5.2 When physically collocated and choosing Option 1 above, splitters will be placed in traditional collocation areas as outlined in the physical collocation terms and conditions in this Appendix or applicable Commission-ordered tariff. In this arrangement, the CLEC will have test access to the line side of the splitter when the splitter is placed in an area commonly accessible by CLECs. It is recommended that the CLEC provision splitter cards that provide test port capabilities. When virtually collocated, SBC-12STATE will install the splitter in an SBC-12STATE bay and SBC-12STATE will access the splitter on behalf of the CLEC for line continuity tests. Additional testing capabilities (including remote testing) may be negotiated by the Parties.
- 5.3 Splitter provisioning will use standard SBC configuration cabling and wiring in SBC-12STATE locations. In situations where the CLEC owns the splitter, the splitter dataport and DSLAM will be hardwired to each other. Connecting Block layouts will reflect standard recognizable arrangements that will work with SBC-12STATE Operations Support Systems ("OSS").
- 5.4 Splitter technology needs to adhere to established industry standards for technical, test access, common size, configurations and shelf arrangements.
- 5.5 All splitter equipment must be compliant with applicable national standards and NEBS Level 1.

## 6. OPERATIONAL SUPPORT SYSTEMS: LOOP MAKEUP INFORMATION AND ORDERING

- 6.1 General: SBC-12STATE will provide CLEC with nondiscriminatory access by electronic or manual means, to its loop makeup information set forth in SBC-12STATE's Plan of Record. In the interim, loop makeup data will be provided as set forth below. In accordance with the FCC's UNE Remand Order, CLEC will be given nondiscriminatory access to the same loop makeup information that SBC-12STATE is providing any other CLEC and/or SBC-12STATE's retail operations or its advanced services affiliate.
- 6.2 Loop Pre-Qualification: Subject to 6.1 above, SBC-12STATE's pre-qualification will provide a near real time response to CLEC queries. Until replaced with OSS access as provided in 6.1, SBC-12STATE will provide mechanized access to a loop length indicator via Verigate and DataGate in regions where Verigate/DataGate are generally available for use with xDSL-based, HFPL, or other advanced services. The loop length is an indication of the approximate loop length, based on a 26-gauge equivalent and is calculated on the basis of Distribution Area distance from the central office. This is an optional service to the CLEC and is available at no charge.
- 6.3 Loop Qualification: Subject to 6.1 above, SBC-12STATE will develop and deploy enhancements to its existing DataGate and EDI interfaces that will allow CLECs, as well as SBC-12STATE's retail operations or its advanced services affiliate, to have near real time electronic access as a preordering function to the loop makeup information. As more particularly described below, this loop makeup information will be categorized by three separate pricing elements: mechanized, manual, and detailed manual.
- 6.3.1 Mechanized loop qualification includes data that is available electronically and provided via an electronic system. Electronic access to loop makeup data through the OSS enhancements described in 6.1 above will return information in all fields described in SBC's Plan of Record when such information is contained in SBC-12STATE's electronic databases. CLEC will be billed a mechanized loop qualification charge for each xDSL capable loop order submitted at the rates set forth in Appendix Pricing.
- 6.3.2 Manual loop qualification requires the manual look-up of data that is not contained in an electronic database. Manual loop makeup data includes the following: (a) the actual loop length; (b) the length by gauge; (c) the presence of repeaters, load coils, bridged taps; and shall include, if noted on the individual loop record, (d) the total length of bridged taps; (e) the

presence of pair gain devices, DLC, and/or DAML, and (f) the presence of disturbers in the same and/or adjacent binder groups. CLEC will be billed a manual loop qualification charge for each manual loop qualification requested at the rates set forth in Appendix Pricing.

- 6.3.3 Detailed manual loop qualification includes all fields as described in SBC's Plan of Record, including the fields described in fields 6.3.2 above. CLEC will be billed a detailed manual loop qualification charge for each detailed manual loop qualification requested at the rates set forth in Appendix Pricing.

6.4 All three categories of loop qualification are subject to the following:

- 6.4.1 If load coils, repeaters or excessive bridged tap are present on a loop less than 12,000 feet in length, conditioning to remove these elements will be performed without request and at no charge to the CLEC.
- 6.4.2 If a CLEC elects to have **SBC-12STATE** provide loop makeup through a manual process for information not available electronically, then the loop qualification interval will be 3-5 business days, or the interval provided to **SBC-12STATE**'s affiliate, whichever is less.
- 6.4.3 If the results of the loop qualification indicate that conditioning is available, CLEC may request that **SBC-12STATE** perform conditioning at charges set forth in Appendix Pricing. The CLEC may order the loop without conditioning or with partial conditioning if desired.
- 6.4.4 For HFPL, if CLEC's requested conditioning will degrade the customer's analog voice service, **SBC-12STATE** is not required to condition the loop. However, should **SBC-12STATE** refuse the CLEC's request to condition a loop, **SBC-12STATE** will make an affirmative showing to the relevant state commission that conditioning the specific loop in question will significantly degrade voice band services.

7. **PROVISIONING**

- 7.1 Provisioning: **SBC-12STATE** will not guarantee that the local loop(s) ordered will perform as desired by CLEC for xDSL-based, HFPL, or other advanced services, but will guarantee basic metallic loop parameters, including continuity and pair balance. CLEC-requested testing by **SBC-12STATE** beyond these parameters will be billed on a time and materials basis at the applicable tariffed rates. On loops where CLECs have requested that no conditioning be performed, **SBC-12STATE**'s maintenance will be limited to verifying loop suitability based on POTS design. For loops having had partial or extensive conditioning performed at CLEC's request, **SBC-12STATE** will verify continuity, the completion of all requested conditioning, and will repair at no charge to CLEC any gross defects which would be unacceptable based on current POTS design criteria and which do not result from the loop's modified design. For loops less than 12,000 feet, **SBC-12STATE** will remove load coils, repeaters, and excessive bridged tap at no charge to CLEC.
- 7.2 Subject to Section 6.4.4 above, CLEC shall designate, at the CLEC's sole option, what loop conditioning **SBC-12STATE** is to perform in provisioning the xDSL loop(s), subloop(s), or HFPL on the loop order. Conditioning may be ordered on

loop(s), subloop(s), or HFPL of any length at the Loop conditioning rates set forth in the Appendix Pricing. The loop, subloop, or HFPL will be provisioned to meet the basic metallic and electrical characteristics such as electrical conductivity and capacitive and resistive balance.

7.3 The provisioning intervals are applicable to every xDSL loop and HFPL regardless of the loop length. The Parties will meet to negotiate and agree upon subloop provisioning intervals.

7.3.1 The provisioning and installation interval for xDSL-capable loops and HFPL, where no conditioning is requested (including outside plant rearrangements that involve moving a working service to an alternate pair as the only possible solution to provide a DSL-capable loop or HFPL), on orders for 1-20 loops per order or per end-user location, will be 5 business days, or the provisioning and installation interval applicable to **SBC-12STATE**'s tariffed xDSL-based services, or its affiliate's, whichever is less.

7.3.2 The provisioning and installation intervals for xDSL-capable loops and HFPL where conditioning is requested or outside plant rearrangements are necessary, as defined above, on orders for 1-20 loops per order or per end-user customer location, will be ten (10) business days, or the provisioning and installation interval applicable to **SBC-12STATE**'s tariffed xDSL-based services or its affiliate's xDSL-based services where conditioning is required, whichever is less. For HFPL orders, intervals are contingent upon CLEC's end user customer release of the voice grade circuit during normal working hours. In the event the end user customer should require conditioning during non-working hours, the due date may be adjusted consistent with end user release of the voice grade circuit and out-of-hours charges may apply.

7.3.3 Orders to convert existing stand-alone DSL-capable UNE loops to line shared loops, regardless of quantity, will be handled as Special Projects. The interval for such conversions will be determined on a case-by-case basis and will be jointly agreed upon by the Parties.

7.3.4 Orders for more than 20 loops per order or per end user location, where no conditioning is requested will have a provisioning and installation interval of 15 business days, or as agreed upon by the Parties. For HFPL orders, intervals are contingent upon end user release during normal working hours. In the event the CLEC's end user customers require conditioning during non-working hours, the due date may be adjusted consistent with end user release of circuit and out-of-hours charges may apply.

- 7.3.5 Orders for more than 20 loops per order which require conditioning will have a provisioning and installation interval agreed by the parties in each instance.
- 7.3.6 Subsequent to the initial order for a xDSL capable loop, subloop, or HFPL additional conditioning may be requested on such loop(s) at the rates set forth in the Appendix Pricing and the applicable service order charges will apply; provided, however, when requests to add or modify conditioning are received for a pending xDSL capable loop(s) order, no additional service order charges shall be assessed, but the due date may be adjusted if necessary to meet standard offered provisioning intervals. The provisioning interval for additional requests for conditioning pursuant to this subsection will be the same as set forth above. In addition, CLEC agrees that standard offered intervals do not constitute performance measurement commitments.
- 7.3.7 The CLEC, at its sole option, may request shielded cabling between network elements and frames within the central office for use with 2-wire xDSL loop or HFPL when used to provision ADSL over a DSL-capable loop or HFPL provided for herein at the rates set forth in the Appendix Pricing. Tight Twist cross-connect wire will be used on all identified DSL services on all central office frames.
- 7.3.8 The provisioning and installation interval for xDSL-capable loops and HFPL, where no conditioning is requested (including outside plant rearrangements that involve moving a working service to an alternate pair as the only possible solution to provide a DSL-capable loop or HFPL), on orders for 1-20 loops per order or per end-user location, will be 5 business days, or the provisioning and installation interval applicable to SBC-12STATE's tariffed xDSL-based services, or its affiliate's, whichever is less.

## 8. ACCEPTANCE TESTING AND COOPERATIVE TESTING

- 8.1 SBC-12STATE and the CLEC agree to implement Acceptance Testing during the provisioning cycle for xDSL loop delivery. When SBC-12STATE provides HFPL, continuity is generally assumed as SBC-12STATE retail POTS service is operating at the time of the order. Therefore, acceptance testing is unnecessary. Generally, SBC-12STATE would not dispatch to provision HFPL, thus would not have a technician at the customer site to perform an acceptance test.

- 8.2 Should the CLEC desire Acceptance Testing, it shall request such testing on a per xDSL loop basis upon issuance of the Local Service Request (LSR). Acceptance Testing will be conducted at the time of installation of the service request.
- 8.2.1 If the LSR was placed without a request for Acceptance Testing, and the CLEC should determine that it is desired or needed during any subsequent phase of provisioning, the request may be added at any time; however, this may cause a new standard due date to be calculated for the service order.
- 8.3 Acceptance Testing Procedure:
- 8.3.1 Upon delivery of a loop to/for the CLEC, **SBC-12STATE**'s field technician will call the LOC and the LOC tester will call a toll free number provided by the CLEC to initiate performance of a series of Acceptance Tests.
- 8.3.1.1 For 2-wire digital loops that are not provisioned through repeaters or digital loop carriers, the **SBC-12STATE** field technician will provide a solid short across the tip and ring of the circuit and then open the loop circuit.
- 8.3.1.2 For 2-wire digital loops that are provisioned through repeaters or Digital Loop Carrier, the **SBC-12STATE** field technician will not perform a short or open circuit due to technical limitations.
- 8.3.2 If the loop passes the "Proof of Continuity" parameters, as defined by this Appendix for DSL loops, the CLEC will provide **SBC-12STATE** with a confirmation number and **SBC-12STATE** will complete the order. The CLEC will be billed for the Acceptance Test as specified below under Acceptance Testing Billing at the applicable rates as set forth in Appendix Pricing.
- 8.3.3 If the Acceptance Test fails loop Continuity Test parameters, as defined by this Appendix for DSL loops, the LOC technician will take any or all reasonable steps to immediately resolve the problem with the CLEC on the line including, but not limited to, calling the central office to perform work or troubleshooting for physical faults. If the problem cannot be resolved in an expedient manner, the technician will release the CLEC representative, and perform the work necessary to correct the situation. Once the loop is correctly provisioned, **SBC-12STATE** will re-contact the CLEC representative to repeat the Acceptance Test. When the aforementioned test parameters are met, the CLEC will provide **SBC-12STATE** with a confirmation number and **SBC-12STATE** will complete



the order. If CLEC xDSL service does not function as desired, yet test parameters are met, **SBC-12STATE** will still close the order. **SBC-12STATE** will not complete an order that fails Acceptance Testing.

- 8.3.4 Until such time as the CLEC and **SBC-12STATE** agree, or industry standards establish, that their test equipment can accurately and consistently send signals through repeaters or Digital Loop Carriers, the CLEC agrees to accept 2-wire digital loops, designed with such reach extenders, without testing the complete circuit. Consequently, **SBC-12STATE** agrees that should the CLEC open a trouble ticket and an **SBC-12STATE** network fault be found by standard testing procedures on such a loop within ten (10) business days (in which it is determined by standard testing to be an **SBC-12STATE** fault), **SBC-12STATE**, upon CLEC request, will adjust the CLEC's bill to refund the recurring charge of such a loop until the fault has been resolved and the trouble ticket is closed.
- 8.3.5 **SBC-12STATE** will be relieved of the obligation to perform Acceptance Testing on a particular loop and will assume acceptance of the loop by the CLEC when the CLEC cannot provide a "live" representative (through no answer or placement on hold) for over ten (10) minutes. **SBC-12STATE** may then close the order utilizing existing procedures, document the time and reason, and may bill the CLEC as if the Acceptance Test had been completed and the loop accepted, subject to Section 8.4 below.
- 8.3.6 If, however, a trouble ticket is opened on the loop within 24 hours and the trouble resulted from **SBC-12STATE** error as determined through standard testing procedures, the CLEC will be credited for the cost of the Acceptance Test. Additionally, the CLEC may request **SBC-12STATE** to re-perform the Acceptance Test at the conclusion of the repair phase again at no charge. This loop will not be counted as a successful completion for the purposes of the calculations discussed in Section 8.4 below.
- 8.3.7 Both Parties declare they will work together, in good faith, to implement Acceptance Testing procedures that are efficient and effective. If the Parties mutually agree to additional testing, procedures and/or standards not covered by this Appendix or any Public Utilities Commission or FCC ordered tariff, the Parties will negotiate terms and conditions to implement such additional testing, procedures and/or standards. Additional charges may apply if any accepted changes in Acceptance Testing procedures require additional time and/or expense.

#### 8.4 Acceptance Testing Billing

8.4.1 The CLEC will be billed for Acceptance Testing upon the effective date of this Appendix for loops that are installed correctly by the committed interval without the benefit of corrective action due to acceptance testing. In any calendar month after the first sixty (60) days of the agreement, the CLEC may indicate that it believes that SBC-12STATE is failing to install loops that are acceptable under the terms and definitions of this Appendix.

8.4.1.1 SBC-12STATE will perform an unbiased random sampling of the CLEC's service orders (or any other statistically robust or mutually acceptable sampling process). If the sampling establishes that SBC-12STATE is correctly provisioning loops with continuity and ordered conditioning eighty percent (80%) of the time over any 2 month period of time, SBC-12STATE may continue charging for Acceptance Testing for all. If the sampling results show that SBC-12STATE is not correctly provisioning loops eighty percent (80%) of the time, or greater, SBC-12STATE may then perform a comprehensive analysis of the population.

8.4.1.2 If the sampling results from Section 8.4.1.1 above show that SBC-12STATE is in non-compliance with the conditioning success rate, as defined in this Appendix, then the CLEC will not be billed for Acceptance Testing for the next sixty (60) days. When and if necessary, the Parties will negotiate, in good faith, to determine a mutually acceptable method for random sampling; however, orders placed within the first thirty (30) days of the CLEC's entry into any Metropolitan Statistical Area ("MSA") shall be excluded from any sampling population, whether random or comprehensive.

8.4.1.3 In any calendar month after the sixty (60) day no-charge period for Acceptance Testing, SBC-12STATE may request another random sampling of orders, using the mutually acceptable random sampling method, as negotiated in Section 8.4.1.2 above, be performed to determine whether SBC-12STATE can show compliance with the minimum success rates, as defined in Section 8.4.1.1 above. If the sampling result show SBC-12STATE is again in compliance, billing for Acceptance Testing shall resume.

8.4.1.4 Regardless of whether SBC-12STATE is in the period in which it may bill for Acceptance Testing, it will not bill for the

Acceptance Testing for loop installs that did not pass the test parameters, as defined by this Appendix. SBC-12STATE will not bill for loop repairs when the repair resulted from an SBC-12STATE problem.

8.4.1.5 Beginning November 1, 2000, the SBC-12STATE delivery commitment, as defined by this Appendix in section 8.4.1.1, changes from 80% to 90%.

8.5 The charges for Acceptance Testing shall be as follows:

REGION	TARIFF	USOC	FIRST HALF HR./FRACTION**	ADDITIONAL **
Ameritech	FCC No. 2; Sec. 13.3.4 (C)(1)(a)	UBCX+	\$40.92	\$22.60
Nevada Bell*	FCC No. 1; Sec. 13.3.5 (B)(1)	UBC++	\$40.21/\$32.72	N/A
Pacific Bell	FCC No. 128; Sec. 13.3.5 (C)(1)(a)	UBC++	\$44.00	\$23.00
Southwestern Bell	FCC No. 73; Sec. 13.4.8 (A)	UBCX+	\$33.51	\$21.32

\* Nevada Bell Charges represent I/R Technicians and Central Office Maintenance respectively.

\*\*Rates subject to tariff changes.

If requested by the CLEC, Overtime or Premium time charges will apply for Acceptance Testing requests in off-hours at overtime time charges calculated at one and one half times the standard price and premium time being calculated at two times the standard price.

## 9. MAINTENANCE /SERVICE ASSURANCE

9.1 If requested by either Party, the parties will negotiate in good faith to arrive at terms and conditions for Acceptance Testing on repairs.

9.2 Narrowband/voice service: If the narrowband, or voice, portion of the loop becomes significantly degraded due to the broadband or high frequency portion of the loop, certain procedures as detailed below will be followed to restore the narrowband, or voice service. Should only the narrowband or voice service be reported as significantly degraded or out of service, SBC-12STATE shall repair the narrowband portion of the loop without disturbing the broadband portion of the loop if possible. In any case, SBC-12STATE shall attempt to notify the end user and CLEC for permission any time SBC-12STATE repair effort has the potential of affecting service on the broadband portion of the loop. SBC-12STATE may proceed with repair of the voice circuit if unable to reach end-user after a reasonable attempt has been made to do so. When connected facility

assignment or additional point of termination (CFA/APOT) change is required due to trouble, the pair change will be completed during the standard offered repair interval. CLEC agrees that standard offered intervals do not constitute performance measurement commitments.

- 9.3 **SBC-12STATE** will provide resolution of CLEC-referred trouble tickets for the HFPL in parity with repair intervals **SBC-12STATE** provides its advanced services affiliates for the HFPL.

9.3.1 If the CLEC opens a trouble ticket for the HFPL portion of the loop to **SBC-12STATE** and the problem is determined to be in the CLEC's network, the CLEC will pay **SBC-12STATE** the applicable commissioned-ordered tariffed rate for trouble isolation, maintenance, and repair (as specified in Section 8.5 above) upon closing the trouble ticket.

9.3.2 SBC-owned line splitters:

9.3.2.1 **SBC-12STATE** will offer a 24-hour clearing time, excluding weekends and holidays, or parity with the repair intervals **SBC-12STATE** provides its advanced services affiliates, whichever is less, for trouble reports on the HFPL only referred by CLEC where the voice service has not been impacted after such trouble has been isolated to the **SBC-12STATE** central office.

9.3.3 CLEC-owned line splitters:

9.3.3.1 If **SBC-12STATE** isolates a trouble (causing significant degradation or out of service condition to the POTS service) caused by the CLEC data equipment or splitter, **SBC-12STATE** will notify the CLEC and request a trouble ticket and a committed restoration time from CLEC for clearing the reported trouble.

9.3.4 Either Party may offer the End User the option of restoring the POTS line if the End User is not satisfied with the repair interval provided by the CLEC. If the End User chooses to have the POTS line restored before the HFPL problem can be corrected and notifies either CLEC or **SBC-12STATE**, the contacted Party will notify the other and provide contact names prior to **SBC-12STATE** "cutting around" the POTS Splitter/DSLAM equipment to restore POTS.

9.3.5 When the CLEC resolves the trouble condition in its equipment, the CLEC will contact **SBC-12STATE** to restore the HFPL.

9.3.6 In the event the trouble is identified and corrected in the CLEC equipment, **SBC-12STATE** will charge the CLEC the applicable commissioned-

ordered tariffed rate for trouble isolation, maintenance, and repair (as specified in Section 8.5 above) upon closing the trouble ticket.

- 9.4 Maintenance, other than assuring loop continuity and balance on unconditioned or partially conditioned loops greater than 12,000 feet, will only be provided on a time and material basis. On loops where CLEC has requested recommended conditioning not be performed, SBC-12STATE's maintenance will be limited to verifying loop suitability for POTS. For loops having had partial or extensive conditioning performed at CLEC's request, SBC-12STATE will verify continuity, the completion of all requested conditioning, and will repair at no charge to CLEC any gross defects which would be unacceptable for POTS and which do not result from the loop's modified design. For loops under 12,000 feet, SBC-12STATE will remove load coils, repeaters and excessive bridge tap at no charge.
- 9.5 Any CLEC testing of the retail-POTS service must be non-intrusive unless utilizing Mechanized Loop Testing (MLT). SBC-12STATE will provide CLECs access to its legacy MLT system and its inherent testing functions. Prior to a CLEC utilizing MLT intrusive test scripts, the CLEC must have established data service on that loop and have specifically informed the customer that service testing will interrupt both the data and voice telephone services served by that line. CLEC may not perform intrusive testing without having first obtained the express permission of the end user customer and the name of the person providing such permission. CLEC shall make a note on the applicable screen space of the name of the end user customer providing permission for such testing before initializing an MLT test or so note such information on the CLEC's trouble documentation for non-mechanized tests.
- 9.6 CLEC hereby agrees to assume any and all liability for any such intrusive testing it performs, including the payment of all costs associated with any damage, service interruption, or other telecommunications service degradation or damage to SBC-12STATE facilities and hereby agrees to release, defend and indemnify SBC-12STATE, and hold SBC-12STATE harmless, from any claims for loss or damages, including but not limited to direct, indirect or consequential damages, made against SBC-12STATE by an end user customer, any telecommunications service provider or telecommunications user relating to such testing by CLEC.
- 9.7 SBC-12STATE will not guarantee that the local loop (s) ordered will perform as desired by CLEC for xDSL-based or other advanced services, but will guarantee basic metallic loop parameters, including continuity and pair balance. CLEC-requested testing by SBC-12STATE beyond these parameters will be billed on time and material basis as set forth in the tariff rates listed above.

- 9.8 The CLEC shall not rearrange or modify the retail-POTS within its equipment in any way without first coordinating with SBC-12STATE.

## 10. SPECTRUM MANAGEMENT

- 10.1 CLEC will advise SBC-12STATE of the PSD mask approved or proposed by T1.E1 that reflect the service performance parameters of the technology to be used. The CLEC, at its option, may provide any service compliant with that PSD mask so long as it stays within the allowed service performance parameters. At the time of ordering a xDSL-capable loop, CLEC will notify SBC-12STATE as to the type of PSD mask CLEC intends to use on the ordering form, and if and when a change in PSD mask is made, CLEC will notify SBC-12STATE. CLEC will abide by standards pertinent for the designated PSD mask type.
- 10.2 SBC-12STATE agrees that as a part of spectrum management, it will maintain an inventory of the existing services provisioned on the cable. SBC-12STATE may not segregate xDSL technologies into designated binder groups without Commission review and approval, or approved industry standard. SBC-12STATE shall not deny CLEC a loop based upon spectrum management issues, subject to 10.3 below. In all cases, SBC-12STATE will manage the spectrum in a competitively neutral manner consistent with all relevant industry standards regardless of whether the service is provided by a CLEC or by SBC-12STATE, as well as competitively neutral as between different xDSL services. Where disputes arise, SBC-12STATE and CLEC will put forth a good faith effort to resolve such disputes in a timely manner. As a part of the dispute resolution process, SBC-12STATE will, upon request from a CLEC, disclose within 3-5 business days information with respect to the number of loops using advanced services technology within the binder group and the type of technology deployed on those loops so that the involved parties may examine the deployment of services within the affected loop plant.
- 10.3 In the event that the FCC or the industry establishes long-term standards and practices and policies relating to spectrum compatibility and spectrum management that differ from those established in this Appendix, SBC-12STATE and CLEC agree to comply with the FCC and/or industry standards, practices and policies and will establish a mutually agreeable transition plan and timeframe for achieving and implementing such industry standards, practices and policies.
- 10.4 Within thirty (30) days after general availability of equipment conforming to applicable industry standards or the mutually agreed upon standards developed by the industry in conjunction with the Commission or FCC, then SBC-12STATE and/or CLEC must begin the process of bringing its deployed xDSL technologies and equipment into compliance with such standards at its own expense.

## 11. RESERVATION OF RIGHTS

- 11.1 The Parties acknowledge and agree that the provision of these DSL-Capable Loops and the HFPL and associated rates, terms and conditions set forth above are subject to any legal or equitable rights of review and remedies (including agency reconsideration and court review). If any reconsideration, agency order, appeal, court order or opinion, stay, injunction or other action by any state or federal regulatory body or court of competent jurisdiction stays, modifies, or otherwise affects any of the rates, terms and conditions herein, specifically including those arising with respect to Federal Communications Commission orders (whether from the Memorandum Opinion and Order, and Notice of Proposed Rulemaking, FCC 98-188 (rel. August 7, 1998), in CC Docket No. 98-147, the FCC's First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. March 31, 1999), in CC Docket 98-147, the FCC's Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC 99-238), including the FCC's Supplemental Order issued *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, in CC Docket 96-98 (FCC 99-370) (rel. November 24, 1999) ("the UNE Remand Order"), or the FCC's 99-355 Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (rel. December 9, 1999), or any other proceeding, the Parties shall negotiate in good faith to arrive at an agreement on conforming modifications to this Appendix. In the event that the FCC, a state regulatory agency or a court of competent jurisdiction, in any proceeding, based upon any action by any telecommunications carrier, finds, rules and/or otherwise orders ("order") that any of the UNEs and/or UNE combinations provided for under this Agreement do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, the affected provision will be invalidated, modified or stayed as required to immediately effectuate the subject order upon written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement on the modifications required to the Agreement to immediately effectuate such order. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or the provisions affected shall be handled under the Dispute Resolution procedures set forth in this Agreement.

## 12. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

- 12.1 Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection,



service and network element provided hereunder: definitions, interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnification; remedies; intellectual property; publicity and use of trademarks or service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; no third party beneficiaries; disclaimer of agency; relationship of the Parties/independent contractor; subcontracting; assignment; responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.